

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
(BOSTON)**

In re: New England Compounding
Pharmacy, Inc. Products Liability
Litigation.

MDL No. 1:13-md-2419-FDS

This Document Relates To:

JONA ANGST and CARY ANGST,

Plaintiffs,

v.

BARRY J. CADDEN, GREGORY
CONIGLIARO, LISA CONIGLIARO
CADDEN, GLENN A. CHIN, ARL BIO
PHARMA, INC. d/b/a ANALYTICAL
RESEARCH LABORATORIES,
MEDICAL SALES MANAGEMENT,
INC., and GDC PROPERTIES
MANAGEMENT, LLC,

Defendants.

CASE No: 1:13- cv-10565

**ANSWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND OF ARL BIO
PHARMA, INC. d/b/a ANALYTICAL RESEARCH LABORATORIES IN
RESPONSE TO JONA AND CARY ANGST’S COMPLAINT**

ANSWER

The defendant, ARL BioPharma, Inc. d/b/a Analytical Research Laboratories
("ARL"), hereby Answers the Plaintiff’s Complaint in this lawsuit ("Lawsuit") as
follows:

INTRODUCTION

The first, unnumbered, paragraph of the Introduction does not contain a specific allegation which ARL can admit or deny.

For the second, unnumbered paragraph of the Introduction, ARL is without sufficient knowledge or information to admit or deny the allegations set forth therein as they relate to the other defendants in the Lawsuit. ARL denies all of the allegations in this paragraph to the extent that they are directed at ARL.

JURISDICTION AND VENUE

1. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 1 of the Complaint as they relate to the other defendants in the Lawsuit. ARL denies all of the allegations in this paragraph to the extent that they are directed at ARL.
2. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 2 of the Complaint.
3. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 3 of the Complaint as they relate to the other defendants in the Lawsuit. ARL denies all of the allegations in this paragraph to the extent that they are directed at ARL.

PLAINTIFFS

4. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 4 of the Complaint.

5. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 5 of the Complaint.

DEFENDANTS

6. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 6 of the Complaint.
7. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 7 of the Complaint.
8. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 8 of the Complaint.
9. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 9 of the Complaint.
10. ARL admits the allegations set forth in Paragraph 10 of the Complaint.
11. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 11 of the Complaint.
12. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 12 of the Complaint.
13. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 13 of the Complaint.

FACTUAL BACKGROUND

14. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 14 of the Complaint.

15. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 15 of the Complaint.
16. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 16 of the Complaint.
17. ARL states that Massachusetts 247 CMR 2.00 and 6.07 speak for themselves and, to the extent that the allegations of Paragraph 17 of the Complaint are inconsistent with 247 CMR 2.00 and 6.07, ARL denies the allegations.
18. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 18 of the Complaint as they pertain to NECC. Inasmuch as Paragraph 18 references 247 CMR 6.02(1), ARL states that Massachusetts 247 CMR 6.02(1) speaks for itself and, to the extent that the allegations of Paragraph 18 of the Complaint are inconsistent with 247 CMR 6.02(1), ARL denies the allegations.
19. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 19 of the Complaint.
20. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 20 of the Complaint.
21. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 21 of the Complaint. .
22. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 22 of the Complaint.
23. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 23 of the Complaint.

24. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 24 of the Complaint.
25. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 25 of the Complaint.
26. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 26 of the Complaint.
27. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 27 of the Complaint.
28. ARL states that its website speaks for itself and, to the extent that the allegations of Paragraph 28 of the Complaint are inconsistent with the website or taken out of context, ARL denies the allegations.
29. ARL states that its website speaks for itself and, to the extent that the allegations of Paragraph 29 of the Complaint are inconsistent with the website or taken out of context, ARL denies the allegations.
30. ARL states that its website speaks for itself and, to the extent that the allegations of Paragraph 30 of the Complaint are inconsistent with the website or taken out of context, ARL denies the allegations.
31. ARL states that its marketing materials speak for themselves and, to the extent that the allegations of Paragraph 31 of the Complaint are inconsistent with the marketing materials or taken out of context, ARL denies the allegations.
32. ARL states that its marketing materials speak for themselves and, to the extent that the allegations of Paragraph 32 of the Complaint are inconsistent with the marketing materials or taken out of context, ARL denies the allegations.

33. ARL states that its website speaks for itself and, to the extent that the allegations of Paragraph 33 of the Complaint are inconsistent with the website or taken out of context, ARL denies the allegations.
34. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 34 of the Complaint.
35. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 35 of the Complaint.
36. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 36 of the Complaint.
37. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 37 of the Complaint.
38. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 38 of the Complaint as they relate to the other defendants in the Lawsuit. ARL denies all of the allegations in this paragraph to the extent that they are directed at ARL.
39. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 39 of the Complaint.
40. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 40 of the Complaint as they relate to the other defendants in the Lawsuit. ARL denies all of the allegations in this paragraph to the extent that they are directed at ARL.
41. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 41 of the Complaint.

42. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 42 of the Complaint.
43. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 43 of the Complaint.
44. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 44 of the Complaint.
45. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 45 of the Complaint.
46. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 46 of the Complaint.
47. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 47 of the Complaint.
48. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 48 of the Complaint.
49. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 49 of the Complaint.
50. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 50 of the Complaint.
51. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 51 of the Complaint.
52. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 52 of the Complaint.
53. ARL denies the allegations set forth in Paragraph 53 of the Complaint.

54. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 54 of the Complaint.

55. ARL denies the allegations set forth in Paragraph 55 of the Complaint.

56. ARL denies the allegations set forth in Paragraph 56 of the Complaint.

57. ARL states that USP 71 speaks for itself. ARL is without knowledge of the size of the subject batch and, therefore, to the extent that the allegation in Paragraph 57 suggests that ARL was acting in a manner inconsistent with USP 71, the allegation is denied.

58. ARL denies the allegations set forth in Paragraph 58 of the Complaint.

59. ARL denies the allegations set forth in Paragraph 59 of the Complaint.

60. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 60 of the Complaint as they relate to the other defendants in the Lawsuit. ARL denies all of the allegations in this paragraph to the extent that they are directed at ARL. ARL further states that its microbiology reports and marketing materials speak for themselves and, to the extent that the allegations of Paragraph 60 of the Complaint are inconsistent with the microbiology reports and marketing materials or are taken out of context, ARL denies the allegations.

61. ARL denies the allegations set forth in Paragraph 61 of the Complaint.

62. ARL denies the allegations set forth in Paragraph 62 of the Complaint.

63. ARL denies the allegations set forth in Paragraph 63 of the Complaint because the allegations in this paragraph do not accurately reflect the substance and context of Dr. Kupiec's article.

64. ARL denies the allegations set forth in Paragraph 64 of the Complaint because the allegations in this paragraph do not accurately reflect the substance and context of Dr. Kupiec's article.
65. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 65 of the Complaint.
66. ARL denies the allegations set forth in Paragraph 66 of the Complaint.
67. ARL denies the allegations set forth in Paragraph 67 of the Complaint.
68. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 68 of the Complaint.
69. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 69 of the Complaint.
70. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 70 of the Complaint.
71. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 71 of the Complaint.
72. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 72 of the Complaint.
73. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 73 of the Complaint.
74. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 74 of the Complaint.
75. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 75 of the Complaint.

76. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 76 of the Complaint.

77. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 77 of the Complaint.

78. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 78 of the Complaint.

79. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 79 of the Complaint.

80. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 80 of the Complaint.

COUNT I - NEGLIGENCE

81. ARL repeats and reasserts its responses to paragraphs 1 through 80 above and incorporates those responses as if specifically set forth herein.

82. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 82 of the Complaint as they relate to the other defendants in the Lawsuit. ARL denies all of the allegations in this paragraph to the extent that they are directed at ARL.

83. ARL denies the allegations set forth in Paragraph 83 of the Complaint.

84. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 84 of the Complaint as they relate to the other defendants in the Lawsuit. ARL denies all of the allegations in this paragraph to the extent that they are directed at ARL.

85. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 85 of the Complaint as they relate to the other defendants in the Lawsuit. ARL denies all of the allegations in this paragraph to the extent that they are directed at ARL.

COUNT II – BREACH OF IMPLIED WARRANTY

86. ARL repeats and reasserts its responses to paragraphs 1 through 85 above and incorporates those responses as if specifically set forth herein.

87. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 87 of the Complaint

88. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 88 of the Complaint.

89. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 89 of the Complaint as they relate to the other defendants in the Lawsuit. ARL denies all of the allegations in this paragraph to the extent that they are directed at ARL.

90. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 90 of the Complaint as they relate to the other defendants in the Lawsuit. ARL denies all of the allegations in this paragraph to the extent that they are directed at ARL.

COUNT III – PUBLIC NUISANCE

91. Since Count III is not directed at ARL, ARL is not required to respond to paragraphs 91 through 99 of the Complaint. To the extent that any response is required to this paragraph, ARL repeats and reasserts its responses to paragraphs 1 through 90 above and incorporates those responses as if specifically set forth herein.

92. Since Count III is not directed at ARL, ARL is not required to respond to paragraph 92 of the Complaint. To the extent that any response is required, ARL is without sufficient knowledge or information to admit or deny the allegations set forth therein.

93. Since Count III is not directed at ARL, ARL is not required to respond to paragraph 93 of the Complaint. To the extent that any response is required, ARL is without sufficient knowledge or information to admit or deny the allegations set forth therein.

94. Since Count III is not directed at ARL, ARL is not required to respond to paragraph 94 of the Complaint. To the extent that any response is required, ARL is without sufficient knowledge or information to admit or deny the allegations set forth therein.

95. Since Count III is not directed at ARL, ARL is not required to respond to paragraph 95 of the Complaint. To the extent that any response is required, ARL is without sufficient knowledge or information to admit or deny the allegations set forth therein.

96. Since Count III is not directed at ARL, ARL is not required to respond to paragraph 96 of the Complaint. To the extent that any response is required, ARL is without sufficient knowledge or information to admit or deny the allegations set forth therein.

97. Since Count III is not directed at ARL, ARL is not required to respond to paragraph 97 of the Complaint. To the extent that any response is required, ARL is without sufficient knowledge or information to admit or deny the allegations set forth therein.

98. Since Count III is not directed at ARL, ARL is not required to respond to paragraph 98 of the Complaint. To the extent that any response is required, ARL is without sufficient knowledge or information to admit or deny the allegations set forth therein.

99. Since Count III is not directed at ARL, ARL is not required to respond to paragraph 98 of the Complaint. To the extent that any response is required, ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 99 of the Complaint.

COUNT IV – LOSS OF CONSORTIUM

100. ARL repeats and reasserts its responses to paragraphs 1 through 99 above and incorporates those responses as if specifically set forth herein.

101. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 101 of the Complaint.

102. ARL is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph 102 of the Complaint as they relate to the other defendants or the Plaintiffs in the Lawsuit. ARL denies all of the allegations in this paragraph to the extent that they are directed at ARL.

WHEREFORE, because the Plaintiff has failed to state a viable cause of action against ARL, the Complaint against ARL should be dismissed.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief may be granted against ARL.

SECOND AFFIRMATIVE DEFENSE

If Plaintiffs have sustained damages, those damages were the result of conduct of individuals over whom ARL had no control and thus for whom ARL is not responsible.

THIRD AFFIRMATIVE DEFENSE

The Complaint is barred because any acts or omissions of ARL were not the legal or proximate cause of any damage to Plaintiffs.

FOURTH AFFIRMATIVE DEFENSE

The Complaint is barred by failure to join a party necessary for just adjudication of this action.

FIFTH AFFIRMATIVE DEFENSE

ARL has performed and fulfilled any and all promises or obligations under any and all applicable contracts, agreements, rules, laws, regulations, and/or ordinances.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims against ARL are barred because the alleged losses were caused by the conduct of others.

SEVENTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims are barred because the alleged losses were caused by the intervening and/or superseding acts of third persons for whom ARL was not responsible.

EIGHTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims against ARL should be dismissed for improper venue.

NINTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims against ARL should be dismissed for forum non-conveniens.

TENTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims should be dismissed for lack of subject matter jurisdiction.

ELEVENTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims against ARL should be dismissed for lack of personal jurisdiction.

TWELTFH AFFIRMATIVE DEFENSE

The Plaintiffs' claims against ARL should be dismissed due to lack of privity.

THIRTEENTH AFFIRMATIVE DEFENSE

ARL reserves the right to amend this Answer and its affirmative defenses, if appropriate, after full investigation and discovery.

FOURTEENTH AFFIRMATIVE DEFENSE

ARL avails itself of and adopts such other defenses raised by any other Defendants as may be applicable.

FIFTEENTH AFFIRMATIVE DEFENSE

If ARL is found liable, it is severally liable only.

SIXTEENTH AFFIRMATIVE DEFENSE

The laws of other jurisdictions apply to this action.

WHEREFORE, ARL respectfully requests that this Honorable Court issue an order dismissing the claims against ARL and awarding ARL the reasonable attorneys' fees and costs it has incurred in the defense of this action.

JURY DEMAND

ARL demands a trial by jury on all issues.

Respectfully submitted,

<p>Dated: April 4, 2013</p>	<p>ARL BIOPHARMA, INC. d/b/a ANALYTICAL RESEARCH LABORATORIES By its attorneys,</p> <p><i>/s/ Kristen R. Ragosta</i></p> <hr/> <p>Kenneth B. Walton, BBO #562174 kwatson@donovanhatem.com Kristen R. Ragosta, BBO #664362 kragosta@donovanhatem.com DONOVAN HATEM LLP Two Seaport Lane, 8th Floor Boston, MA 02210 Tel: (617) 406-4500 Fax: (617) 406-4501</p>
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been filed with the Clerk of the Court on April 4, 2013 using the ECF system that sent notification of this filing to all ECF—registered counsel of record via e-mail generated by the Court's ECF system.

/s/ Kristen R. Ragosta
Attorney for ARL Bio Pharma, Inc. d/b/a
Analytical Research Laboratories

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